

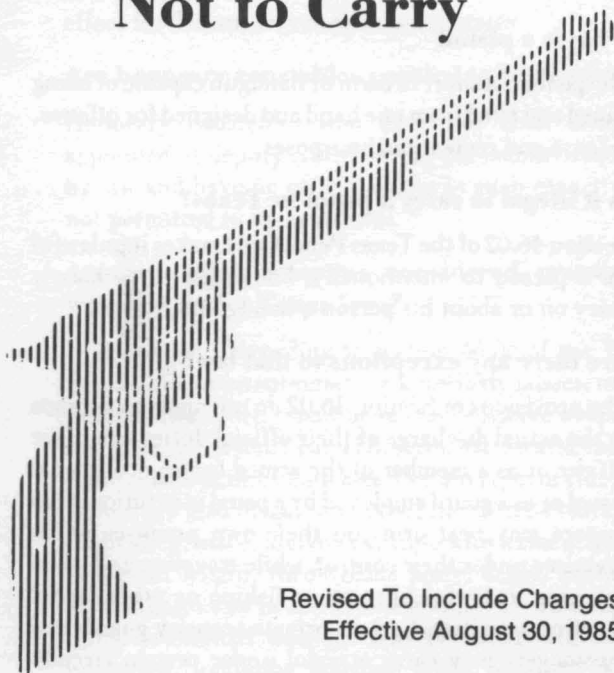
1-10-86  
L-1096  
sm Res



**Texas Agricultural Extension Service**

*People Helping People*

# **PISTOLS in Texas: To Carry or Not to Carry**



Revised To Include Changes  
Effective August 30, 1985

**OUTLINE SERIES FOR COUNTY OFFICIALS**

**Texas Agricultural Extension Service  
Zerle L. Carpenter, Director  
Texas A&M University  
College Station, Texas**

# PISTOLS IN TEXAS: TO CARRY OR NOT TO CARRY

**John A. Gilmartin and  
Joe M. Rothe\***

Helping citizens more clearly understand laws which govern their lives is a matter of interest and concern to elected officials of Texas. County officials frequently receive inquiries concerning laws on various subjects. Texas laws regulating ownership and use of pistols are sometimes misunderstood and subject to popular misconceptions. This leaflet provides some answers to common questions about pistols. Encouraging better understanding of laws is one vital service provided by your elected county officials.

## **What is a pistol?**

The pistol is a short firearm or handgun capable of being aimed and fired from one hand and designed for offense, defense and recreational purposes.

## **Is it illegal to carry a pistol in Texas?**

Section 46.02 of the Texas Penal Code makes it unlawful for a person to intentionally, knowingly or recklessly carry on or about his person a handgun.

## **Are there any exceptions to that law?**

The provisions of Section 46.02 do not apply to persons in the actual discharge of their official duties as a peace officer or as a member of the armed forces or national guard or as a guard employed by a penal institution. Gun owners may bear arms on their own premises or on premises under their control, while traveling and when engaging in lawful hunting or fishing or other lawful sporting activities. Certain private security guards and messengers may carry a pistol under certain circumstances set out in the statutes after obtaining a required commission.

## **Does the statute provide penalties for those who violate its provisions?**

Yes, a person who violates this statute commits a misdemeanor and may be punished by a fine not to

---

\*Extension coordinator, V.G. Young Institute of County Government and attorney at law; and Extension specialist, V.G. Young Institute of County Government, The Texas A&M University System.

exceed \$2,000 or by confinement in jail for a term not to exceed 1 year, or by both such fine and imprisonment. If the offense is committed while on any premises licensed or issued a permit by the state for the sale or service of alcoholic beverages, it is a felony punishable by imprisonment for 2 to 10 years. In addition, a fine not to exceed \$5,000 may also be assessed.

**Are there any other particular places where weapons may not be taken?**

Yes, Article 46.04 of the Texas Penal Code says that a person commits an offense if with a firearm, or explosive weapon or illegal knife, he intentionally, knowingly or recklessly goes:

1) on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution;

2) on the premises of a polling place on the day of an election or while absentee balloting is in progress; or

3) into any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.

An offense under this section is a third degree felony punishable by imprisonment for any term of 2 to 10 years or by imprisonment and fine not to exceed \$5,000.

**Can a person obtain a permit from the sheriff or other county official to carry a pistol?**

There is no permit law in Texas. The statutes set forth circumstances under which one may carry a pistol and no county official can authorize another citizen to violate the law.

**Is it legal to carry a pistol to or from a place of purchase or repair?**

Generally, yes; however, Texas courts have held that an unreasonable delay in carrying a pistol from the place of purchase to one's home is sufficient to sustain a conviction for violation of the law. *Henson v. State*, 252 SW2d 711.

**Is having a pistol in the glove compartment or under the front seat of an automobile considered having it "on or about" one's person?**

Yes, the term "on or about person" has been expanded to include persons occupying vehicles. Convictions on these points were upheld in *Hutspeth v. State*, 254 SW2d 130 and *Garrett v. State*, 370 SW2d 270. See *Hazel v. State*, 534 SW2d 698.

**Is it permissible to carry a pistol that is unloaded or lacks a part essential to make it fire?**

No, it is just as unlawful to carry an unloaded pistol as it is to carry one loaded and capable of being fired. It is not unlawful to carry a pistol which has been sufficiently disassembled to the point it is incapable of being fired or used in a threatening manner. The ultimate decision as to its operability or use belongs to a trial court judge or jury.

**Is it permissible to carry a pistol between one's residence and place of business?**

Texas courts have held that ordinarily one is authorized to carry a pistol from his place of business to his home when he is carrying a considerable sum of money and is traveling the shortest and most practical route home. See cases cited in *Boyett v. State*, 319 SW2d 106.

**When would a person be considered a "traveler" entitled to carry a pistol?**

Each case must be determined on its particular facts, but the following qualifications of a traveler are factors which courts sometimes use as guidelines in determining the issue.

- 1) A traveler is generally one who travels across a county line.
- 2) A traveler must be on the most direct route from origination to destination without deviating.
- 3) Momentary stopping before, during or after a trip will not cause one to lose a traveler's status, but such status can be lost by unreasonable delays.
- 4) Distance traveled may determine whether one is a traveler, but distance must be considered along with mode of travel.

**Who determines whether a person is in fact a traveler?**

This is a question of fact for a trial court judge or jury to decide. The practical disadvantage in relying upon this provision to justify carrying a pistol is the potential risk

of being arrested, jailed and subjected to trial and possible punishment in establishing one's status as a traveler. A similar risk is involved when one must prove any set of circumstances entitling him to possess a pistol.

**Is there any difference in Texas when carrying a pistol if one conceals it or displays it openly?**

No, a person may not carry a pistol from place to place idly, or habitually or for an unlawful purpose (*Deuschle v. State*, 4 SW2d 559). Unless authorized by some other provision of the law, a person carrying an unconcealed pistol is in open violation of the law.

**Do these statutes apply to persons traveling beyond the boundaries of Texas?**

No, each state has its own laws governing the possession of weapons, and Texas laws have no extra-territorial effect for Texans traveling in other states.

**Are honorary constables entitled to carry pistols?**

Honorary constables who have not been officially appointed as deputy constables in the manner required by law and have no official duties in such capacity are not permitted to carry a pistol.

**Are any other weapons considered prohibited weapons under Texas laws?**

It is unlawful according to section 46.06 of the Texas Penal Code to intentionally or knowingly possess, manufacture, transport, repair or sell an explosive weapon, a machine gun, a short-barrel firearm, a firearm silencer, a switchblade knife or knuckles. Certain types of clubs and knives are also illegal to possess, including a blackjack, night stick, mace, tomahawk, knife with a blade over 5½ inches in length, throw-blade knife, dagger including dirk, stiletto and poniard, bowie knife, sword or spear. Some prohibited weapons may be manufactured and possessed, including machine guns, pursuant to the National Firearms Act. More information about these may be obtained from the chief law enforcement officer of your area or the nearest office of the Department of Alcohol, Tobacco and Firearms.

**May persons who have been convicted of certain felony offenses possess a pistol or other prohibited weapon?**

Section 46.05 of the Texas Penal Code states that no person who has been convicted of a felony involving an

an act of violence may possess, away from the premises on which he lives, a firearm of any type. Violation constitutes a felony punishable by imprisonment up to 10 years. In addition, a violator may be fined not to exceed \$5,000.

**Does Texas have a general gun ownership registration law?**

No.

**Where can a person obtain information about the federal laws governing the purchase, use and possession of pistols and other firearms?**

The Alcohol, Tobacco and Firearms Division of the Internal Revenue Service can furnish this information.

**Do federal laws require record keeping on pistol purchases?**

Certain federal laws require licensed gun dealers to keep acquisition and disposition records of gun sales. Laws require dealers to report all multiple sales of handguns, that is, the sale of two or more handguns within a 5-day period. Other federal laws prohibit gun ownership to certain classes of persons such as felons and insane persons.

This pamphlet is published by the V.G. Young Institute of County Government, conducted by the Texas Agricultural Extension Service, to provide authoritative, educational information on the subject matter covered. It is distributed with the understanding that the publisher is not engaged in rendering legal services.

*Educational programs conducted by the Texas Agricultural Extension Service serve people of all ages regardless of socioeconomic level, race, color, sex, religion, handicap or national origin.*

Issued in furtherance of Cooperative Extension Work in Agriculture and Home Economics, Acts of Congress of May 8, 1914, as amended, and June 30, 1914, in cooperation with the United States Department of Agriculture. Zerle L. Carpenter, Director, Texas Agricultural Extension Service, The Texas A&M University System.